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## Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205*

<b>Agency/Board/Commission:</b>	Tennessee Department of Human Services
<b>Division:</b>	Family Assistance Division
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**Revision Type (check all that apply):**

- ☒ Amendment  
☒ New  
☐ Repeal

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only **ONE** Rule Number/Rule Title per row)**

Chapter Number	Chapter Title
1240-01-47	Non-Financial Eligibility Requirements Families First Program
Rule Number	Rule Title
1240-01-47-.16	Personal Responsibility Plan

Chapter Number	Chapter Title
1240-01-58	Electronic Benefit Transfer Card - Prohibited Uses
Rule Number	Rule Title
1240-01-58-.01	Purpose
1240-01-58-.02	Definitions
1240-01-58-.03	Prohibited Uses
1240-01-58-.04	Monitoring and Penalties
1240-01-58-.05	Appeals

Chapter 1240-01-47  
Non-Financial Eligibility Requirements Families First Program

Amendment

Rule 1240-01-47-.16, Personal Responsibility Plan, is amended by deleting paragraphs (1) and (2) in their entirety and by substituting instead the following, so that, as amended, paragraphs (1) and (2) shall read as follows:

- (1) Personal Responsibility Plans Required for Eligibility.
  - (a) As a condition of eligibility for the entire AU, the caretaker (both parents in a two (2) parent AU) who applies for or receives Families First/TANF must sign a Personal Responsibility Plan (PRP). Signing the PRP indicates an intent to comply with the requirements of the plan. The PRP is developed by the Department in consultation with the caretaker relative and:
  - (b) Requires that all caretakers (both parents in a two (2) parent AU):
    - 1. Agree to cooperate with child support enforcement activities;
    - 2. Assure that the children in the AU attend school, including kindergarten when available;
    - 3. Assure that the children in the AU receive regular immunizations and health checks;
    - 4. Agree to participate in thirty (30) hours per week of activities as described in 1240-01-49-.03, if not exempt;
    - 5. Agree not to falsify work and/or educational activities documentation, such as providing a falsified employer's statement, attendance, etc. to validate work activities; and
    - 6. Agree not to knowingly access public assistance benefits through an electronic benefit transfer card at any point of sale device, automated teller machine or other online system used for the processing of payment or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58.
- (2) As a condition of eligibility for him/herself, the minor parent who is a dependent child in an AU must sign a PRP. Signing the PRP indicates the intent to comply with the requirements of the plan listed in subparagraph (b), parts 1-5 above. Subparagraph (b), part 6 above does not apply to a minor parent who is a dependent child in an AU.

Rules 1240-01-47-.16 Personal Responsibility Plan is amended by adding a new subparagraph under paragraph (5) to be designated subparagraph (d), so that as amended the new subparagraph (d) shall read as follows:

- (d) Failure to comply with the prohibited uses of the electronic benefit transfer card as described under Chapter 1240-01-58 shall result in reimbursement of the illegally transferred funds to the Department and/or prohibition from receipt of public assistance benefits by means of direct cash payment or electronic benefit transfer card.

Authority: T.C.A. §§ 4-5-201 et seq., 71-3-126, 71-1-105, 71-3-102, 71-3-103 and 71-3-104; 71-3-108(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 603; 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2), (3) and (12), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14) and 42 U.S.C. §§ 654 and 657; 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14; and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31.

Chapter 1240-01-58  
Electronic Benefit Transfer Card - Prohibited Uses

New Rules

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1240-01-58-.01 Purpose

The purpose of this Chapter is to prevent public assistance benefits, provided pursuant to the Families First/TANF program, from being used in any EBT transaction in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret.

Authority: T.C.A. §§ 4-5-201 et seq.; 57-2-101(1); 71-3-126; 42 U.S.C. § 603; 42 U.S.C. § 608(a)(12).

1240-01-58-.02 Definitions. For purposes of this Chapter:

- (1) "Adult cabaret" is an establishment that features, as a principal use of its business, entertainers, waiters, or bartenders who expose to public view of the patrons within such establishment, at any time, the bare female breast below a point immediately above the top of the areola, human genital, pubic region, or buttocks, even if partially covered by opaque material or completely covered by translucent material, including swim suits, lingerie, or latex covering. "Adult cabaret" includes a commercial establishment that features entertainment of an erotic nature, including exotic dancers, strippers, male or female impersonators, or similar entertainers.
- (2) "Assistance Unit (AU)" means the "aid group (AG)" or group of people applying for or receiving Families First/TANF cash assistance benefits.
- (3) "Automated teller machine (ATM)" is an electronic cash dispensing device from which an account holder may withdraw cash, including public assistance benefits, using an electronic benefit transfer card.
- (4) "Casino," "gambling casino," or "gaming establishment," means an establishment with a primary purpose of accommodating the wagering or gambling of money. The term "casino," "gambling casino," or "gaming establishment" does not include either:
  - (a) A grocery store which sells groceries including staple foods and which also offers, or is located within the same building or complex as, casino, gambling, or gaming activities; or
  - (b) Any other establishment that offers casino, gambling, or gaming activities incidental to the principal purpose of the business.
- (5) "Department" means the Department of Human Services.
- (6) "Electronic benefit transfer (EBT) card" is a debit card which allows the EBT card holder to access public assistance benefits through an ATM or point of sale device.
- (7) "EBT transaction" means the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service.
- (8) "Families First" refers to the temporary public assistance program administered by the Department and provided under the federal Temporary Assistance for Needy Families (TANF), pursuant to Title IV-A of the Social Security Act.

- (9) "Gambling" means risking anything of value for a profit whose return is to any degree contingent on games of chance associated with casinos, including, but not limited to, slot machines, roulette wheels and the like.
- (10) "Intoxicating Liquor" means and includes alcohol, spirits, liquors, wines, and every liquid or solid, patented or not, containing alcohol, spirits, liquor or wine, and capable of being consumed by human beings.
- (11) "Knowingly" means that an EBT card user, merchant, or business entity has actual knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device used for the illegal transaction is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret. The term "knowingly" may be established by direct or circumstantial evidence of knowledge that the EBT card contains public assistance benefits and the ATM or point of sale device is located in a liquor store, casino, gambling casino, gaming establishment, or adult cabaret.
- (12) "Liquor store" is any retail establishment which sells exclusively or primarily intoxicating liquor. The term "liquor store" does not include a grocery store which sells both intoxicating liquor and groceries including staple foods.
- (13) "Located in". An ATM, POS device, or other online system used for the withdrawal of funds or processing of payments is "located in" a liquor store, casino, gambling casino, gaming establishment, or adult cabaret, when the ATM, POS device, or other online system is located on any part of the merchant's business property, which is either owned or leased by the merchant.
- (14) "Point of sale (POS) device" is any terminal at which a customer makes a payment to a merchant in exchange for goods or services, including any manual or electronic terminal where a Families First/TANF recipient may complete a retail transaction using an EBT card.
- (15) "Protective payee" is a person, other than the caretaker or grantee relative who is disqualified from directly receiving public assistance benefits under this Chapter, to whom a Families First/TANF grant is made payable for the benefit of the qualified members of the AU. A protective payee has responsibility for administering the payment for the benefit of the AU.
- (16) "Public assistance benefits" means money, in cash or in other forms of exchange, provided directly or indirectly to a Families First/TANF recipient through the Families First/TANF program.

Authority: T.C.A. §§ 4-5-201 et seq.; 4-51-102; 7-51-1102; 39-17-501; 57-3-101; 71-3-103; 71-3-126, 42 U.S.C. § 601 et seq.; 42 U.S.C. § 608(a)(12)(B).

#### 1240-01-58-.03 Prohibited Uses.

- (1) It is illegal for any Families First/TANF recipient to knowingly use an EBT card to purchase any goods or services through a POS device or any other online system used to process payments or access public assistance benefits through an ATM or other online system used for the withdrawal of funds located in any of the following businesses:
  - (a) liquor store;
  - (b) casino;
  - (c) gambling casino;
  - (d) gaming establishment; or
  - (e) adult cabaret.
- (2) It is illegal for any person or business entity, or any agent or employee of the person or business entity, to knowingly accept public assistance benefits from an EBT card for the purchase of any goods or services in the following locations:

- (a) liquor store;
- (b) casino;
- (c) gambling casino;
- (d) gaming establishment; or
- (e) adult cabaret.

Authority: T.C.A. §§ 4-5-201 et seq.; 7-51-1102; 39-17-501; 57-3-101; 71-3-126, 42 U.S.C. § 608(a)(12)(B).

1240-01-58-.04 Monitoring and Penalties.

- (1) Any Families First/TANF caretaker must submit to the Department a signed Personal Responsibility Plan (PRP) acknowledging his/her understanding that it is illegal to knowingly use an EBT card containing public assistance benefits at any POS device, ATM, or other online system used for the processing of payments or withdrawal of funds located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret to purchase any goods or services as described in this Chapter.
- (2) The Department shall monitor EBT transactions on a quarterly basis to determine whether there is any illegal use of EBT cards under this Chapter.
  - (a) Any Families First/TANF recipient or caretaker who knowingly participates or knowingly allows another to use the recipient's EBT card in an EBT transaction at an ATM machine, POS device, or other online system used for processing of payments or withdrawal of funds in any prohibited business location shall be subject to the following penalties:
    - 1. First or Second Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at a POS machine or the amount of the cash withdrawn and used from an ATM.
    - 2. Third or Subsequent Violation. The Families First/TANF recipient or caretaker shall be required to reimburse the Department for the amount of the purchase at the POS machine or the amount of cash withdrawn and used from an ATM, and:
      - (i) The Families First/TANF recipient or caretaker shall be permanently prohibited from accessing temporary public assistance benefits, to the extent permitted by federal law, by means of direct cash payment or an EBT card.
      - (ii) The Department shall afford the Families First/TANF recipient or caretaker an administrative hearing prior to taking any action to disqualify the individual from direct receipt of public assistance benefits.
      - (iii) The Department shall designate a protective payee to administer the temporary public assistance grant for the benefit of the AU in the event a Families First/TANF recipient or caretaker is prohibited from receipt of public assistance benefits by means of direct cash payment or an EBT card under this Chapter.
    - 3. Any illegal EBT transaction under this Chapter shall be classified as an overpayment and the Department shall initiate collection proceedings pursuant to Chapter 1240-01-52.
  - (b) Any person or business entity, or any agent or employee of the person or business entity, which knowingly accepts EBT card purchases for any goods or services at any prohibited business location, shall be subject to the following penalties:

1. First Violation. The first violation shall result in a civil penalty of one thousand dollars (\$1,000).
  2. Second Violation. The second violation within five (5) years of the first violation shall result in a civil penalty of twenty-five hundred dollars (\$2,500).
  3. Third or Subsequent Violation. The third or subsequent violation within five (5) years shall result in a civil penalty of five thousand dollars (\$5,000).
  4. The Department may refer any person or business entity that violates this Chapter to the district attorney for that district, who may bring an action to suspend the business license and permits of the person or business entity for one (1) year for any violation under this Chapter.
  5. The Department may bring a civil action to enforce any civil penalties assessed to any person or business entity under this Chapter in a complaint filed in the chancery court of the county where the person or business entity is located.
- (3) The Department may, at its discretion and to the extent permitted under federal law, take action to block POS devices, online systems used for the withdrawal of funds or processing of payments, and ATMs located in any prohibited location from accepting an EBT card transaction.

Authority: T.C.A. §§ 4-5-201 et seq.; 71-3-126; 42 U.S.C. § 608(a)(12).

1240-01-58-.05 Appeals.

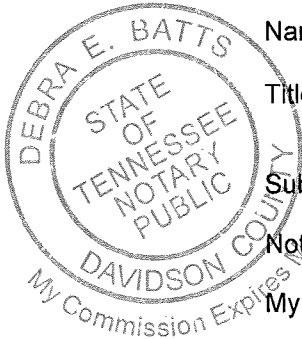
Any Families First/TANF recipient, merchant, or business entity the Department determines has illegally used an EBT card or unlawfully engaged in an EBT transaction under this Chapter shall have the right to an appeal conducted according to appeal procedures set forth in Chapter 1240-5 and Title 4, Chapter 5, Part 3 of the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-5-201 et seq.; 4-5-301 et seq.; 71-3-126.

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 03/12/2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/16/13  
02/04/13; 02/05/13; 02/06/13; 02/07/13; 02/10/13;  
Rulemaking Hearing(s) Conducted on: (add more dates). 02/11/13; 02/13/13; 02/14/13



Date: March 12, 2014  
Signature: Madeline Brough  
Name of Officer: Madeline Brough  
Title of Officer: Assistant General Counsel  
Tennessee Department of Human Services  
Subscribed and sworn to before me on: March 12, 2014  
Notary Public Signature: Debra E. Batts  
My commission expires on: May 20, 2014

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
3-24-14  
Date

**Department of State Use Only**

Filed with the Department of State on: 4/2/14  
Effective on: 7/1/14  
Tre Hargett  
Tre Hargett  
Secretary of State

## Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

### Comment One:

In 1240-01-47, perhaps there is a drafting error in the proposed rules as the rules refer to "AU"/"Assistance Unit" instead of "AG"/"aid group," which is used in the current regulations. See 1240-01-02-.01(1), which states the abbreviation for "aid group" is "AG."

### Response and reason for adoption or rejection of suggested changes:

The Department's regulations at 1240-01-02-.01 refer to "Assistance Group" as it relates to the Food Stamp (SNAP) program. In 1240-01-02-.03, however, the Department defines the "Assistance Unit" for TANF, formerly AFDC, as "the group of individuals for whom assistance is sought." For this reason, the use of "assistance unit" "AU" is appropriate and the Department has not deleted the use of "assistance unit" or "AU" in the proposed regulations. The Department, however, has provided clarification of the definition of "Assistance Unit" in this Rule.

### Comment Two:

In 1240-01-47-.16, there is not any authority in T.C.A. § 71-3-126 for the Department to change and/or add to the personal responsibility plan requirements.

### Response and reasons for adoption or rejection of suggested changes:

First, T.C.A. § 71-1-105(12) provides that the Department has the authority to "[m]ake such rules and regulations and take such action as may be deemed necessary or desirable to carry out this part and that are not inconsistent with this part." Second, T.C.A. § 71-3-104(h)(2)(B) provides that the personal responsibility plan "is not limited to" the following requirements: (1) the children in the family attend school; (2) the children in the family receive immunizations and health checks; and (3) the parent or caretaker relative cooperate in the establishment and enforcement of child support. Third, amending the personal responsibility plan requirements to add an agreement to comply with EBT prohibited uses strengthens the effectiveness of the personal responsibility plan and ensures the Department that the Families First/TANF recipient is aware of his/her responsibilities for proper use of the EBT card. In addition, the inclusion of the agreement not to falsify work documentation also strengthens the effectiveness of the personal responsibility plan because work activities are a central component of the Families First/TANF program. For these reasons, the Department has not removed the additional requirements to the personal responsibility plan added by the proposed rules.

### Comment Three:

In 1240-01-47-.16, perhaps 1240-01-47-.16(1)(b)(5), which speaks to the falsification of work activities documentation, should be removed from these proposed rules as this addition is not required to enact the EBT prohibited uses statute, T.C.A. § 71-3-126. In addition, there was not any notice of this change provided to the public.

### Response and reasons for adoption or rejection of suggested changes:

The Department has the authority to promulgate rules and regulations, pursuant to T.C.A. § 71-1-105(12), which are deemed necessary to carry out the temporary assistance program. Based on the Department's review of the temporary assistance program, the Department has determined that it is necessary to expand the requirements of the personal responsibility plan to include an agreement not to falsify work activities documentation. In addition, the Department provided appropriate notice of these proposed rules as required in T.C.A. § 4-5-203. For those reasons, the Department has not deleted the new personal responsibility plan requirements as suggested. The Department, however, has made drafting changes to 1240-01-47-.16(1)(b)(5).

### Comment Four:

In 1240-01-47-.16, perhaps the Department should add the word "knowingly" to 1240-01-47-.15(1)(b)(6) because the intent of T.C.A. § 71-3-126 is to prohibit cash assistance recipients from knowingly accessing public assistance benefits through an electronic benefit transfer card or ATM device at any restricted establishment.

### Response and reasons for adoption or rejection of suggested changes:

SS-7039 (October 2011)

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RDA 1693

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March 12, 2014  
March 12, 2014



The Department has added the word "knowingly" to 1240-01-47-.16(1)(b)(6) as suggested.

Comment Five:

In 1240-01-47-.16(5)(d), perhaps "knowingly" should be added so that paragraph (d) will read: "Failure to knowingly comply . . . ."

Response and reasons for adoption or rejection of suggested changes:

The Department has determined that the addition of "knowingly" is not necessary in 1240-01-47-.16(5)(d).

Comment Six:

In 1240-01-58, perhaps the rules should set forth how the Department will prevent cash assistance benefits from being spent on liquor, beer, wine, etc. in locations where cash assistance recipients may use their EBT cards to purchase beer, such as in grocery stores which sell beer and may, in the future, sell liquor and wine. Grocery stores are not able to prevent individuals from buying beer with their EBT cards. The rules should set forth how the Department plans to determine what items customers purchase or to restrict the purchase of those products.

Response and reasons for adoption or rejection of suggested changes:

Neither state or federal law require the Department to restrict the usage of the EBT card at grocery stores where a recipient has access to staple food items along with other items such as beer, etc. The regulations specifically exempt a grocery store which sells both intoxicating liquor and groceries including staple foods from being one of the prohibited businesses. The law specifically limits the restrictions of the recipient's use of cash assistance on EBT card in liquor stores, casinos, and adult entertainment venues. For this reason, the Department has not made any changes to the proposed rules based on this comment.

Comment Seven:

In Rule 1240-01-58, these rules allow a Families First/TANF recipient to access cash benefits at an unrestricted location and then use that cash withdrawn from an EBT card at one of the prohibited businesses.

Response and reasons for adoption or rejection of suggested changes:

Federal and state law do not restrict where Families First/TANF recipients may spend their EBT card cash, which they withdrew at an unrestricted location. For this reason, the Department did not make any changes to the rules based on this comment.

Comment Eight:

In 1240-01-58-.01(13), it is noted that the definition of "protective payee" does not match the definition of protective payee under the proposed rules in 1240-01-57, which limits the protective payee to being assigned for children under sixteen (16) years of age.

Response and reasons for adoption or rejection of suggested changes:

The proposed rules in 1240-01-57 are consistent with the drug testing statute, T.C.A. § 71-3-1202(h)(5), which state that a "protective payee shall be designated to receive TANF benefits on behalf of the child who is under sixteen (16) years of age." The protective payee definition promulgated in these proposed rules does not provide the same limitation, but is instead consistent with the Department's current definition of protective payee set forth in 1240-01-45-.02. For these reasons, the Department did not make any changes to these proposed rules.

Comment Nine:

In 1240-01-58, commenters suggest that the Department add the word "knowingly" as the intent of T.C.A. 71-3-126 is to prohibit recipients from knowingly accessing public assistance benefits through an electronic benefit transfer card at any ATM or point of sale device in a restricted establishment.

Response and reasons for adoption or rejection of suggested changes:

The Department has included "knowingly" in 1240-01-58-.04(2)(a) and (b).

Comment Ten:

In 1240-01-58-.02(11), the definition of "located in", perhaps the phrase "including any common area adjacent to the merchant's business" is too arbitrary and cash assistance recipients may easily violate these rules by mistake.

Response and reasons for adoption or rejection of suggested changes:

The Department has removed "including any common area adjacent to the merchant's business property" that the merchant uses to conduct business or facilitate entry into the business" from the definition of "located in" in 1240-01-58-.02(11). This change was made as suggested to clarify that the transaction must have occurred on the restricted merchant's business property, either owned or leased by the merchant.

Comment Eleven:

Please clarify who will be liable in the event that a person or business entity knowingly accepts public assistance benefits from an EBT card for the purchase of good or services in one of the prohibited locations. It is unclear whether the retailer and/or the POS device vendor will be liable.

Response and reasons for adoption or rejection of suggested changes:

The liability will be placed on the merchant and/or agents or employees of the merchant who knowingly accept EBT cards at the prohibited business establishments. The POS device vendors would not be liable. The Department has provided additional clarity in the rules based upon this comment.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

The prohibitions for the use of Electronic Benefit Transfer cards by households in the Temporary Assistance for Needy Families program are codified at 42 U.S.C. § 608(a)(12). The United States Code requires states to implement policies and practices to prevent the prohibited use of the EBT card. In addition, the Tennessee legislature passed similar legislation in response to the federal law, which is codified at T.C.A. § 71-3-126. For purposes of the Regulatory Flexibility Act of 2007, the Department of Human Services certifies that these rulemaking hearing rules substantially codify existing federal and state law, such that, pursuant to Section 6 of the Regulatory Flexibility Act, the Regulatory Flexibility Act's provisions do not apply to these rules. In addition, these rulemaking hearing rules appear to have a minimal effect on small businesses as defined in the Act because these rules provided penalties to be assessed to a limited number of businesses as required by the federal and state statutes and who are found to knowingly be in violation of the prohibitions set forth in state and federal law. Compliance with the law and rules as written will minimize civil penalties ranging from \$1000.00 for the first offense up to \$5,000.00 for a third or subsequent offense.

## **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules have no projected financial impact on local governments.

## Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

This Rule will implement state and federal law to prevent misuse of cash assistance benefits in the Department of Human Services' Families First/TANF program. The Rule prohibits a Families First/TANF recipient from knowingly using an EBT card containing public assistance benefits at an ATM machine or POS device in or on the premises of a restricted business, and prohibits the restricted businesses from knowingly accepting the EBT cards in transactions through ATMs, POS devices or other online system used for withdrawal of funds or processing of payments located in their businesses. Restricted businesses include liquor stores, casinos, gambling casinos, gaming establishments, and adult cabarets. Such illegal use may result in the recipient's reimbursement to the Department for the amount of the purchase or cash withdrawn. Upon the third violation, the recipient will be subject to permanent prohibition from the use of the EBT card for public assistance benefits. In addition, any restricted person or business entity that accepts an EBT card containing public assistance benefits for purchases of goods or services at any prohibited business location shall be subject to penalties from \$1,000 for the first violation to \$5,000 for a third or subsequent violation within five (5) years and may have their licenses or other permits to operate for one (1) year.

This Rule also implements additional requirements for a cash assistance recipient's personal responsibility plan which include: (1) agreement not to falsify work documents; and (2) agreement not to knowingly use the EBT card in any prohibited business. These personal responsibility plan requirements were not previously required.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

The federal and state laws providing authority for this Rule as set forth below:

Federal law, 42 U.S.C. § 608(a)(12), provides that any state receiving a Temporary Assistance to Needy Families (TANF) grant under the Social Security Act must maintain policies and practices to prevent cash assistance from being used in an EBT card transaction at any liquor store; casino, gambling casino, or gaming establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment. Federal law defines "electronic benefit transfer transaction" as "the use of a credit or debit card service, automated teller machine, point-of-sale terminal, or access to an online system for the withdrawal of funds or the processing of a payment for merchandise or a service." A grocery store which sells groceries including staple foods is excluded from the definition of prohibited businesses.

State law, T.C.A. § 71-3-126, which will be effective on July 1, 2014, provides that a Families First/TANF recipient shall not knowingly use an EBT card at any Point of Sale device or ATM located in any liquor store; casino, gambling casino, or gaming establishment; or an adult cabaret. The statute also prohibits the merchant's knowing acceptance of public assistance benefits from an EBT card at any of the prohibited venues. Additionally, section 71-3-126 provides penalties associated with a recipient's illegal use and a merchant's illegal acceptance of the EBT card in one of the prohibited venues. The Families First/TANF recipient must reimburse the Department for any illegal use of the EBT card in one of the prohibited venues. After the Families First/TANF recipient's third violation the recipient must be permanently disqualified from receiving cash assistance by means of direct cash payment or an EBT card. The penalties for a merchant's first, second and third violation are one-thousand dollars (\$1,000), two thousand five hundred dollars (\$2,500), and five thousand dollars respectively. In addition, the statute provides that the district attorney general may bring an action to suspend for one (1) year the business licenses/permits of any merchant that violates this section. The Department of Human Services may bring an action to enforce these civil penalties in the chancery court of the county where the business is located. These penalties are not set forth in federal law. Lastly, the statute provides that the Department must have a system for reviewing EBT card transactions at least on a quarterly basis.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

The recipients of cash assistance, DHS eligibility staff, and DHS investigations staff as well as the owners/operators of liquor stores and adult entertainment venues are most directly affected by this Rule. The Department has not received any comments regarding the rejection of this Rule, as this Rule is required by T.C.A. § 71-3-126. It is essential to promulgate this Rule so that the Department may maintain federal program compliance with Section 404 of the Middle Class Tax Relief and Job Creation Act of 2012, 42 U.S.C. § 608(a)(12) (P.L. 112-96), which requires states receiving TANF grants to: "maintain policies and practices as necessary to prevent assistance provided under the State program funded under this part from being used in any electronic benefit transfer transaction in any liquor store; any casino, gambling casino, or gaming establishment; or any retail establishment which provides adult-oriented entertainment in which performers disrobe or perform in an unclothed state for entertainment." In addition, the Tennessee General Assembly passed implementing legislation, Tenn. Code Ann. § 71-3-126 (P.L. 312 (2013)) to require the Department to establish a system for reviewing the use of EBT cards containing TANF benefits to determine if they are being used illegally under federal and state law and to promulgate rules to implement it.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are not any attorney general opinions or judicial rulings that directly relate to this Rule.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The Department, as part of the Middle Class Tax Relief and Job Creation Act of 2012, is required to implement restrictions on the utilization of TANF cash assistance in liquor stores, gambling/casino establishments, and adult cabarets by July 2014. The plan was presented to the United States Department of Health and Human Services by February 22, 2014. The state law and these rules are part of that plan. Failure to implement restrictions, as required under federal law, may result in a 5% reduced TANF funding penalty of \$9.5 million to the State.

The Department intends to fund this directive by reallocating resources within the existing TANF grant monies to account for the implementation costs. The Department has concluded that the costs associated with implementation of these requirements can be administered with existing TANF funds. The Department has determined that implementation of the legislation will come at no additional cost since existing resources are sufficient to administer it.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Madeline B. Brough, Assistant General Counsel  
Tricia Reinhard, Inspector General  
Ben Maxwell, Special Assistant to the Commissioner  
Wanda Franklin, Director of Family Assistance

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Madeline B. Brough, Assistant General Counsel  
Wanda Franklin, Director of Family Assistance

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Madeline B. Brough, Assistant General Counsel  
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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**“REDLINE VERSION-CHAPTER 1240-01-47 DATED MARCH 11, 2014”**

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
FAMILY ASSISTANCE DIVISION**

**CHAPTER 1240-01-47  
NON-FINANCIAL ELIGIBILITY REQUIREMENTS  
FAMILIES FIRST PROGRAM**

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**1240-01-47-.16 PERSONAL RESPONSIBILITY PLAN.**

(1) Personal Responsibility Plans Required for Eligibility.

- (a) As a condition of eligibility for the entire AGAU, the caretaker (~~both parents in a two-~~ (2) parent AU-groups, both parents) who applies for or receives Families First/TANF must sign a Personal Responsibility Plan (PRP). Signing the PRP indicates an intent to comply with the requirements of the plan. ~~—The PRP is developed by the Department in consultation with the Department caretaker relative and:~~
- (b) Requires that all caretakers (~~in two-parent groups, both parents in the Aga two (2) parent AU~~):
1. Agree to cooperate with child support enforcement activities;
  2. Assure that the children in the AGAU attend school, including kindergarten when available;
  3. Assure that the children in the AGAU receive regular immunizations and health checks; ~~and~~
  4. Agree to participate in thirty (30) hours per week of activities as described in 1240-01-49-.03, if not exempt;
  5. Agree not to falsify work and/or educational activities documentation, such as providing a falsified employer's statement, attendance, etc. to validate work activities; and
  6. Agree not to knowingly access public assistance benefits through an electronic benefit transfer card at any point of sale device, automated teller machine or other online system used for the processing of payment or withdrawal of funds



**“REDLINE VERSION-CHAPTER 1240-01-47 DATED MARCH 11, 2014”**

located in any liquor store, casino, gambling casino, gaming establishment, or adult cabaret as prohibited under Chapter 1240-01-58.

- (2) As a condition of eligibility for him/herself, the minor parent who is a dependent child in an assistance unit AU, must sign a Personal Responsibility Plan. Signing the PRP indicates the intent to comply with the requirements of the plan listed in subparagraph (b), parts 1-5 above. The PRP requirements are the same as those listed in 1240-01-47-16(1)(a) above. Subparagraph (b), part 6 above does not apply to a minor parent who is a dependent child in an AU.
- (3) As a condition of eligibility for the entire AG/AU, the minor parent who is a caretaker of his/her own AG/AU must sign a Personal Responsibility Plan. Signing the PRP indicates the intent to comply with the requirements of the plan. The PRP requirements are the same as those listed in 1240-01-47-16(1)(a) above.
- (4) The Department or its designees will provide benefits such as child care and transportation necessary to assist the individual in complying with the requirements set out in the Personal Responsibility Plan.
- (5) Failure, without good cause, to comply with the provisions of the PRP will result in the following sanctions:
  - (a) For failure to comply with the work requirement:
    1. For noncompliance with the work requirement, the entire AG will be ineligible for a Families First payment until compliance is met;
    2. For noncompliance with the work requirement of a minor parent who is not the head of household, the noncompliant individual's needs will be removed in the determination of eligibility.
  - (b) For failure to comply with the school attendance requirement:
    1. Failure of one or more of the children to meet this requirement will result in a twenty percent (20%) reduction in the Families First grant until compliance is met.
  - (c) For failure to comply with the immunization and health check requirement:
    1. Failure to meet these requirements for one or more children will result in a twenty percent (20%) reduction in the Families First grant until compliance is met.
  - (d) Failure to comply with the prohibited uses of the electronic benefit transfer card as described under Chapter 1240-01-58 shall result in reimbursement of the illegally transferred funds to the Department and/or prohibition from receipt of public assistance benefits by means of direct cash payment or electronic benefit transfer card.

**Authority:** T.C.A. §§4-5-201 et seq., 4-5-202, 4-5-209, 71-1-105, 71-3-152, 71-3-153 and 71-3-154; 71-3-158(d)(2)(D); 42 U.S.C. §§ 601 et seq., 42 U.S.C. § 604(i); 42 U.S.C. § 607(c), (d) and (e); 42 U.S.C. § 608(a)(2) and (3), 42 U.S.C. § 608(b)(3); 42 U.S.C. § 609(a)(14) and 42 U.S.C. §§ 654 and 657; 45 C.F.R. § 261.2, 45 C.F.R. § 261.12 and 45 C.F.R. § 261.14; and Public Acts of 1996, Chapter 950, §1115 of the Social Security Act; Deficit Reduction Act 2005 (Pub. L. 109-171 §§ 7101 and 7102, February 8, 2006); 71 Federal Register 37454 (June 29, 2006); and Acts 2007, Chapter 31, April, 2009 (Revised)

**“REDLINE VERSION-CHAPTER 1240-01-47 DATED MARCH  
11, 2014”**

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